

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Chemical Waste Management, Inc.
Bakersfield Facility
4450 California Avenue, Suite K
Box 328
Bakersfield, California 93309

EPA ID No. CAT000624056

Respondent.

Docket HWCA 20030251

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Chemical Waste Management, Inc. (Respondent) enter into this Consent Order and agree as follows:

1.1. Site. Respondent (generates, handles, treats, stores, and/or disposes of) hazardous waste at the following site: 27001 Round Mountain Road, Bakersfield, California 93308 (Site).

1.2. Inspection. The Department inspected the Site on December 6 and 7, 2001; March 26 and April 10, 2002.

1.3. Permit/Interim Status. The Department authorized Respondent to manage hazardous waste by a Post Closure Permit issued on April 30, 1991.

1.4. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the

Chemical Waste Management, Inc. Consent Order
Bakersfield Facility Docket HWCA 20030251

Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

1.6. Respondent's Contentions. Respondent contends that in certain instances set forth herein, Respondent was acting in full compliance with all applicable permits, although its conduct nonetheless violated an over-riding applicable regulation:

(a) as to Violation 2.4, Respondent contends that it was, however, monitoring all constituents of concern identified in, and required to be monitored by its 1991 Post-Closure permit issued by the Department and its 1999 Waste Discharge Requirements Permit, 99-088, issued by the Central Region of the California Regional Water Quality Control Board.

(b) as to Violation 2.5, Respondent contends that its use of well (C06) was in compliance with its monitoring plans and requirements of the 1999 Waste Discharge Requirements Permit 99-088 issued by the Central Valley Region of the California Regional Water Quality Control Board.

1.7. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations.

VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. The Respondent violated California Health and Safety Code section 25202(a); California Code of Regulations, title 22, section 66264.97(e)(4); and Central Valley Regional Water Quality Control Board Monitoring and Reporting Program No. 99-088, Section D, in that on or about January 1, 1999, Respondent failed to follow Respondent's approved Monitoring Plan. Respondent failed to follow procedures on pages 19, 27 and 28 of the *Amended Report of Waste Discharge Groundwater Monitoring Plan* (EGI/GA 1995) and procedures on pages 59, 62, 69, 74, 76, 82 through 85, and 93 of the *WMX Technologies, Inc. Manual for Groundwater Sampling* (WMX 1995).

2.2. The Respondent violated California Code of Regulations, title 22, section 66264.97(e)(15), in that on or about the second quarter of 2000, the first quarter of 2001, and the third quarter of 2001, Respondent failed to obtain quarterly groundwater level measurements.

2.3. The Respondent violated California Code of Regulations, title 22, section 66264.97(e)(13) in that, prior to August 28, 2000, Respondent failed to obtain a quantitative turbidity measurement each time a well was sampled.

2.4. The Respondent violated California Code of Regulations, title 22, section 66264.93, in that since 1991, Respondent failed to include in the list of constituents of concern and monitoring parameters, all of the waste constituents, reaction products, and hazardous constituents that were reasonably expected to be in or derived from waste in the regulated unit.

2.5. The Respondent violated California Code of Regulations, title 22, section 66264.97(b)(1)(B), in that Respondent used a monitoring well (CO6) as a point of compliance monitoring well for the Eastern Waste Management Unit. Well

CO6 did not provide groundwater samples that were representative of the uppermost aquifer.

SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Within 30 days of the effective date of this Order, Respondent shall submit a Certification of Compliance signed by an authorized representative of Respondent to certify, to the extent applicable, that the violations stated in Section 2.1, 2.2 and 2.3 have been corrected. The Certification of Compliance shall be prepared in accordance with the California Code of Regulations, title 22, section 66270.11(d).

3.1.2. Within 60 days of the effective date of this Order, Respondent shall add volatile organic compounds and semi-volatile organic compounds to the list of constituents of concern for the Eastern Waste Management Unit and Western Waste Management Unit. During the Summer/Fall 2003, Winter/Spring 2004, Summer/Fall 2004 and Winter/Spring 2005 groundwater sampling events, the Respondent shall monitor volatile organic compounds and semi-volatile organic compounds in wells CO6, C11, C12, CW15, MW01, MW02, MW06, MW11, CW10, MW07R, PC01R, PC02, PC03R, and PC04. If a well is decommissioned and replaced during this timeframe, the Respondent shall monitor volatile organic compounds and semi-volatile organic compounds in the replacement well.

3.1.3. Within 30 days of the effective date of this Order, Respondent shall obtain quarterly groundwater elevation measurements from well CW-09 and shall use these measurements to determine the groundwater flow direction in the Weathered Round Mountain Silt.

3.1.4. Within 90 days of the effective date of this Order, Respondent shall submit for Department approval a work plan to decommission and replace well CO6. The Respondent shall implement the work plan within 45 days of Department approval and shall sample the replacement well within 60 days after completion of well installation.

3.1.5. Immediately, and for a period thereafter of not less than five years, Respondent shall maintain this Order as part of its operating record.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Ms. Kate Burger
Engineering Geologist
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Ms. Astrid L. Brown, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, California 93611

Ms. Charlene Williams, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Mr. Joe Canas, REHS
Hazardous Material Program Manager
Kern County Environmental Health
2700 M Street, Suite 300
Bakersfield, California 93301

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Consent Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Consent Order for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may have by operation of any law or otherwise. The Department and its authorized representatives, subject to any reasonable and necessary safety consideration applicable to the Site, may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall not be liable for any injuries suffered by the Department and its Authorized Representative while on site due solely to any act or omission of said Department or Representative.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Consent Order at Respondent's central depository for said records and data. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order.

3.9.2. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. The Central Depository shall be located at Waste Management's office, 1701 Westwind Drive, No. 112, Bakersfield, California.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

3.10. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Action. By agreeing to this Consent Order, the Department does not waive the right to take further enforcement action, not addressed by the required corrective action set forth in this Order.

4.2. Penalties for Noncompliance. Notwithstanding paragraph 4.1 above, failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the

Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

4.5. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

4.6. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

PENALTY

5.1. Respondent shall pay the Department the total sum of \$12,500, which includes \$12,500 as reimbursement of the Department's costs.

5.2. Payment is due within 30 days from the effective date of this Consent Order.

5.3. Respondent's check shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806

Chemical Waste Management, Inc. Consent Order
Bakersfield Facility Docket HWCA 20030251

Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Ms. Astrid L. Brown, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, California 93611

Mr. James J. Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Consent Order is the date it is signed by the Department.

Dated: 12/22/03

Original signed by C.K. Cullison
Chemical Waste Management, Inc.

Dated: 12/29/03

Original signed by Astrid Brown
Astrid L. Brown, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control

Chemical Waste Management, Inc. Consent Order
Bakersfield Facility Docket HWCA 20030251